

The 19th June, 1971

No. 17077.—Shri Bulbir Singh Ranolia on his *ad hoc* appointment as Sub-Divisional Engineer for a period of six months has formed and assumed charge of the Mechanical Public Health Sub-Division, Faridabad with effect from 1st May, 1971 (forenoon).

J. L. SETHI,

Chief Engineer, Haryana,
P. W. D., Public Health Branch, Chandigarh.
(IRRIGATION BRANCH)

The 9th June, 1971

No. 2924-IPWII-71/15894.—In exercise of the powers conferred by section 38 of the Northern India Canal and Drainage Act, 1873, Central Act VIII of 1873, the Governor of Haryana hereby directs that owners rate of Rs. 1.50 per acre matured shall be levied on the areas irrigated by the Jui Lift Irrigation scheme with effect from Rabi 1970-71.

B.L. AHUJA,
Commissioner and Secretary to Government,
Haryana Irrigation Power Department
Chandigarh.

BUILDINGS AND ROADS BRANCH

The 16th June, 1971

No. 4593-PWIV-(2).71/16041.—Whereas it appears to the Governor of Haryana that land is likely to be required to be taken by Government at public expense for a public purpose, namely for the construction of Post Office building and S. P. Ms quarter at Ladwa (Karnal district).

It is hereby notified that land in the locality described below is likely to be required for the above purpose.

This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana authorises the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey and take levels of any land in the locality and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality may, within, thirty days of the publication of this notification, file an objection in writing before the Collector of Karnal.

SPECIFICATION

District	Tehsil	Locality	Area	Khasra No.
1	2	3	4	5
Karnal	Thanesar	Ladwa	349 2	177
S Sq. Yds. or. 07 Acres.				

B. L. AHUJA, Secy.

The 3rd June, 1971

No. 28-RA/316/59.—Whereas it appears to the Governor of Haryana that land is likely to be required to be taken by Government at public expense for a public purpose, namely Constructing Dabh Ballab Road in Rohtak District, it is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provisions of section IV of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section the Governor of Haryana is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do other acts required or permitted by that section.

Any person interested who has any objection in the acquisition of any land in the locality may within 30 days of the publication of this notification file an objection in writing before the Land Acquisition Collector, Haryana, P.W.D., B. & R. Branch, Ambala Cantt.

SPECIFICATION

District	Tehsil	Locality	Area in acres	Remarks
Rohtak	Rohtak	Dobh	5.36	<i>Village Dobh.</i> From R.D. 0 to 531 land width to be acquired 12.20 M. wide and from R.D. 531 to 1429 consolidation path is to be followed 3.35 M. and remaining land width to be acquired 8.85 M. & from R.D. 1429 to 1777 land width to be acquired 12.20 metres
Do	Do	Banyani	2.96	<i>Village Banyani.</i> From R. D. 1777 to 2760 land width of be acquired 12.20 M.
Do	Do	Marodi Rangran	8.33	<i>Village Marodi Rangran.</i> From R. D. 2760 to 3943 consolid. path is to be followed 6.71 M. and remaining land width 5.49 meters to be acquired and fr. in R.D. 3943 to 4200 land width to be acquired 12.20 meters after deducting the area of drain from R. D. 3943 in 4035 i.e., 92M. length and 12.20 M. wide and from R.D. 4200 to 4500, consolidation path is to be followed 7.31 M. wide and remaining land width to be acquired 4.89 M. and land from R.D. 4500 to 6098 consolidation path is to be followed 6.71 M. and remaining land width to be acquired 2.74 metres.
Do	Do	Marodi Jattan	1.08	<i>Village Marodi Jattan.</i> Land from R.D. 4500 to 6098 land width to be acquired 2.75 meters
Do	Do	Ballob	6.67 24.40	<i>Village Ballob.</i> From R.D. 6098 to 6300 land width to be acquired 12.20 M. and from R.D. 6300 to 7980 consolidation path is to be followed 6.71 M. & remaining land width to be acquired 5.49 M. and from R.D. 7980 to 8310 land to be acquired 12.20 M as demarcated at site and shown on the land plans.

(Sd)
Superintending Engineer,
Rohtak Circle, P.W.D., B. & R.,
Rohtak.

COLONIZATION DEPARTMENT

The 18th June, 1971

No. D-11-129-(II)/3260/PK.—Whereas the Governor of Haryana is satisfied that land required to be taken by Government at the public expenses for public purpose, namely, for the development of a Main including Township and Industrial Area at Fatehpur, tehsil Kaithal, district Karnal, it is hereby declared that the land described in the specification below is required for the aforesaid purpose.

350

This declaration is made under the provision of section 6 of the Land Acquisition Act, 1894, to all whom it may concern, and under the provision of the Section 7 of the said Act, the Extra Assistant Colonization Officer, Haryana Chandigarh, specifically appointed to exercise the powers of Collector under the said Act, is hereby directed to take order for the acquisition of the said land.

The plan of the land may be inspected in the offices of the Colonization Officer, Haryana, Chandigarh, Kothi No. 1517, Sector 18-D, Chandigarh.

SPECIFICATION

District	Tehsil	Village H. B.	Areas No.	Description of Kh. Nos.
Karnal	Kaithal	Fatehpur	A—K—M	Rect. No 216/20 min. 21/1, 21/2
		H.B. No. 8	48—2—18	Rect. No. 217/16, 17, 18, 19, 20/1, 20/2, 21, 22, 23, 24, 25/1, 25/2, 25/3, 25/4, 26.
				Rect. No. 218/13/1 min, 13/2, 14/1, 14/2, 16/1, 16/2/1, 16/2/2, 17, 18, 19/1, 19/2, 22/1, 22/2, 23/1, 23/2, 24/1, 24/2, 25/1, 25/2.
				Rect. No. 231/2/1, 2/2, 3/1, 3/2, 4/1, 4/2, 5/1, 5/2, 5/3, 6/1, 6/2, 7, 8, 15.
				Rect. No. 232/1/1, 1/2, 2, 3, 4, 5/1, 5/2, 6, 7/1, 7/2, 8/1, 8/2, 9/1, 9/2, 10/1, 10/2, 10/3, 11, 12/1, 12/2, 13/1, 13/2, 14/1, 14/2, 15, 16, 17/1, 17/2, 18/1, 18/2.
				Rect. No. 233/1/1, 1/2, 1/3, 9/2, 10/1, 10/2, 11/20.
				Rect. No. 320, 475, 476, 494, 926, 927, 928, 929.
				A.K.M.
				Total Area 48—2—18

M. L. BATRA,

No. D-11-12-a(I)-3264/P.K.—Whereas the Governor of Haryana is satisfied that the land required to be taken by Government at the public expense, for public purpose namely, for the development of a Mandi including Township and industrial area at Pundri tehsil Kaithal, district Karnal, it is hereby declared that the land described in the specification below is required for the aforesaid public purpose.

This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Extra Assistant Colonization Officer, Haryana Chandigarh, specifically appointed to exercise the powers of Collector under the said Act, is hereby directed to take order for the acquisition of the said land.

The plan of the land may be inspected in the office of the Colonization Officer, Haryana, Chandigarh (Kothi No. 1517, Sector 18-D), Chandigarh.

SPECIFICATION

District	Tehsil	Village H. B. No.	Area	Description of Khasra Nos.
A. K. M.				
Karnal	Kaithal	Pundri H. B. 26	51—7—8	Rect. No. 19/15/1, 15/2, 16, 25.
				Rect. No. 20/8/1, 8/2, 9, 10, 11/1, 11/2, 12/1, 12/2, 13/1, 13/2, 13/3, 14, 15, 16, 17/1, 17/2, 18/1, 18/2, 19, 20, 21, 22, 23/1, 23/2, 23/3, 24/2, 24/1, 24/3, 25.
				Rect. No. 21/11, 18, 19/1, 19/2, 20/1, 20/2, 20/3, 21/1, 21/2, 22, 23/2, 24/2, 24/1, 25.
				Rect. No. 22/21.
				Rect. No. 26/1/1, 2/1/1 min, 2/1/2, 2/2, 3, 4/1, 4/2, 4/3, 5, 6/2, 7, 8/1, 8/2, 9/1, 9/2, 10, 12, 14/1, 20/1, 20/2, 21/1, 21/2, 21/3, 22/1, 22/2, 22/3/1, 22/3/2, 23/1, 23/4.
				Rect. No. 27/1, 2, 3, 4/1, 4/2, 5, 6, 7/1, 7/2, 8, 9/1, 10/1, 16/2, 16/3, 16/4, 25/1/1, 25/1/2, 25/2, 25/3, 25/4.
				Rect. No. 28/5.
				Rect. No. 48/4/4, 5/1, 5/2/1, 5/2/2.
				Rect. No. 49/1/1, 1/4, 1/5, 2/1, 2/2, 2/3, 3/1, 3/2, 3/3.
				Rect. Nos. 549, 777, 778 min, 779, 780 min.
A. K. M.				
			Total Area	51—7—8

M. L. BATRA, Secy.

LABOUR DEPARTMENT

The 16th June, 1971

No. 6989-4-Lab-71/19721.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Municipal Committee, Karnal.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 38 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, KARNAL

Present—

Shri Ram Lal Chaudhry for the workmen.

Shri Kishori Lal for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes between the Municipal Committee, Karnal and its employees for adjudication to this Tribunal,—*vide* Order No. ID/5887-91, dated 21st March, 1970 :—

- (1) Whether the workmen are entitled to increase in wages. If so; from which date and with what details ?
- (2) Whether the dismissal of Shri Tarlok Chard is justified and in order ? If not ; to what relief is he entitled ?
- (3) Whether the Beldars and Chungi Moharrir who have completed 240 days service should be confirmed on their respective posts ? If so ; from which date and with what details ?
- (4) Whether the stoppage of annual increment of Sarvshri Shambhu Dayal, Asa Singh and Chaman Lal, Octroi Inspectors is justified and in order ? If not ; to what relief are they entitled ?
- (5) Whether the termination of services of Shri Sadhu Ram is justified and in order ? If not; to what relief is he entitled ?
- (6) Whether the termination of services of Sarvshri Tehai Ram, Jagdish Chander, Sat Pal, Ram Dhan and Harish Chander, Octroi Moharrir are justified and in order ? If not ; to what relief are they entitled ?
- (7) Whether the termination of services of Sarvshri Sat Narain and Sita Ram Beldar are justified and in order ? If not ; to what relief are they entitled ?
- (8) Whether Sarshri Tehai Ram and Jagdish Chander, Octroi Moharrirs are entitled to for wages from 12th September, 1969 to 16th September, 1969 ? If so; with what details ?

On receipt of the reference notices were given to the parties and they filed their respective statements. A preliminary objection has been raised on behalf of the respondent Municipal Committee that the Octroi Department is not an industry and as such there is no industrial dispute between the parties within the meaning of the Industrial Disputes Act and the present reference is consequently invalid. This objection was brought under the following issue.

“Whether the Octroi Department of the Committee is not an industry and the reference is therefore illegal ?”

The parties have led some evidence with regard to the functioning of the Municipal Committee in general and the Octroi Department in particular, its By-laws, *inter se* transfers of the employees from one department to another.

Arguments have been addressed at considerable length and I have been referred to a number of authorities on both sides. The contentions put forward on behalf of the workmen are :—

- (1) That the municipal Committee which acts under the Punjab Municipal Act, 1911 functions as a single unit and transfers and promotions of the employees from one department to another are permissible ;
- (2) That the predominant function of the Octroi Department is to impose, levy and collect octroi taxes on the goods brought from outside within the octroi limits of the Municipal Committee ;

(3) That the taxes so collected by the Octroi Department go into the general Municipal fund out of which several activities are carried on in the public interest thus rendering services of the community at large.

It is, therefore, argued that the Octroi Department which engages itself in the imposition, levy and collection of the Octroi taxes and helps the Municipal Committee in rendering material services to the community at large should be treated as an "Industry" within the meaning of section 2 (j) of the Industrial Disputes Act, 1947. I have been referred to 1960-I-LLJ-523 (Supreme Court) Corporation of City of Nagpur vs. its workmen, 1960-II-LLJ-657 (Bombay High Court) Sirur Municipality and its workmen, 1970-Labour Industrial cases 863 (Punjab and Haryana High Court), Workmen of Faridabad Municipal Committee vs. K. L. Gosain ; 1965-I-LLJ-652 (Punjab High Court), Municipal Committee, Raikot vs. Ram La'l Jain, 1960-I-LLJ-251, State of Bombay vs. Hospital Mazdoor Sib'n. M. attention has further been invited to certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal Executive Officer's Rules.

On the other hand, the case for the Municipal Committee is that the Octroi Department is only discharging regal functions in the matter of collecting the octroi taxes at the prescribed rates and as it is not engaged either in production or distribution of goods nor in rendering any material services to the community, it cannot be held to be an 'industry' within the meaning of the Industrial Disputes Act. In support of the above contention reliance has been placed upon several authorities reported as 1963-II-LLJ-264 (Bombay High Court) Vasudevan (S) and others and Mital (S.T.) and others, 1957-I-LLJ(8)/61, Baroda Borough Municipality and its workmen, 1967-II-LLJ-720 (Supreme Court), Madras Gymkhana Club Employees Union vs. Management Madras Gymkhana Club, 1970-Labour Industrial cases 1172 (S.C.) Safdarjang Hospital vs. Kuldip Singh Sethi.

I have very carefully gone through the above authorities and given a considered thought to the contention raised on both sides. The definition of the term industry as given in section 2(j) of the Industrial Disputes Act, 1947, reads as under :—

Section 2 (j)

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen :

Hon'ble the Supreme Court was pleased to observe as under in the Madras Gymkhana Club Employees Union vs. the management of Madras Gymkhana Club (1957-II-LLJ-720) referred to above :—

It is, therefore, clear that before the definite work engaged in can be described as an industry, it must be of 'trade' or 'business', or 'manufacture' character or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Now in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to his own profit. The Act in terms contemplates cases of industrial dispute where the Government or a local authority or a public utility service may be the employer. The expansion of the Governmental or municipal activity in fields of productive industry is a feature of all developing welfare states. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of materials goods and services cheaper by eliminating profits. Government and local authorities act as individual do and the policy of the Act is to put Government and local authorities on a par with private individuals. But Government cannot be regarded as an employer within the Act if the operations are Governmental or administrative in character. The local authorities also cannot be regarded as industry unless they produce material goods or render material services and do not share by delegation in Governmental functions or functions incidental thereto. There is no essential difference between educational institutions run by municipalities and those run by universities. And yet a distinction is sought to be made on the dichotomy of regal and municipal functions. Therefore, the word 'undertaking' must be defined as 'any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade.' This is the test laid down in Banerji's case and followed in the Baroda Borough Municipality case. Its extension in the Corporation case was unfortunate and contradicted the earlier cases."

Now, a local body like the Municipal Committee is primarily a subordinate branch of Governmental activities which functions for public purposes through various departments. But each and every department of the Municipal Committee can not be held to be an industry as defined under section 2 (j) of the Act. Whether a particular department is or is not an industry depends upon the nature of the activities carried on by that department. In the instant case, we are concerned with the Octroi Department of which the predominant function, as already observed, is to impose levy and collect octroi taxes on goods brought within the octroi limits of the Municipal Committee. This activity is manifestly not analogous to trade or business carried on with the object of production or distribution of material goods or rendering of material services to the community at large or part thereof, as observed by the Hon'ble Supreme Court in the Gymkhana

Club case referred to above. This is merely a regal function like that of the Income Tax Department discharged by this particular department of the Municipal Committee by virtue of the delegation of the necessary powers in this behalf by the Government, and as such, it does not fall within the ambit of industry as defined in section 2 (j) of the Act. It could, of course, be held to be an industry if it was engaged in the production or distribution of material goods or in rendering material services to the public. The material services of the nature contemplated by the various authorities cited above may be rendered by some other departments of the Municipal Committee like the Fire Brigade Department, Lighting Department, Water Works Department, Health Department as held in Nagpur City of Corporation decision. But that is not the case here.

For the reasons aforesaid, I have no hesitation in holding that the Octroi Department of the Municipal Committee which is not embarked on any economic activity analogous to a trade or business, carried on for the purposes of production or distribution of material goods or for rendering material services to the public at large or any part thereof is not an industry within the meaning of section 2 (j) of the Industrial Disputes Act. The preliminary issue is decided accordingly.

In view of the above, no further proceedings are called for in the case for the simple and obvious reason that the Octroi Department being not an industry, there is no industrial dispute between the parties and the present reference is apparently incompetent. I give my award accordingly but without making any order as to costs.

Faridabad :

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Dated the 28th May, 1971.

O. P. SHARMA,
Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

No. 539, dated the 31st May, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th May, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

The 16th/17th June, 1971

No. 6094-4-Lab-71/19779.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of Messrs Vasudeva Industries, Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 69 of 1969

between

SHRI R. S. RANA, WORKMAN AND THE MANAGEMENT OF MESSRS VASUDEVA, INDUSTRIES,
FARIDABAD

Present—

Shri R.S. Rana concerned workman with Shri Darshan Singh authorised representative.

Shri P.D. Mehta, for the management.

AWARD

An industrial dispute existing between the management of Messrs Vasudeva Industries, Faridabad, and its employee, Shri R.S. Rana, was referred to this Tribunal, by order No. ID/FD/356D/29673-77, dated 6th November, 1969, of the Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, with the following terms of reference.

Whether the termination of services of Shri R.S. Rana was justified and in order. If not, to what relief is he entitled ?

On receipt of the reference usual notices were given to the parties. No separate claim statement was filed on behalf of the workman and he obviously relied upon the demand notice, dated 3rd June, 1969 received along with the reference wherein it has been alleged that the management had illegally dismissed him from service,—vide letter No. E-3/5/1758, dated 12th May, 1969, and as such, he was entitled to be reinstated with continuity of

previous service and full back wages. The management, on the other hand, pleaded in the written statement filed on 29th December, 1969 that Shri R.S. Rana had been dismissed from service after holding a fair and impartial enquiry into the charges of misconduct levelled against him and not for any considerations of victimisation and as such the reference was bad in law. The enquiry proceedings and some other documents were filed along with the written statement.

Shri R.S. Rana, concerned workman, filed objections to the enquiry proceedings on 2nd January, 1970, wherein it was further alleged that he had been appointed, —*vide* letter dated 18th September, 1967 and the termination of his services had been effected in violation of this letter. It was further urged that the charges levelled against him were vague and he had been given no opportunity to defend himself in the domestic enquiry which had been conducted in violation of the principles of natural justice and the findings of the Enquiry Officer were perverse.

On the above pleadings of the parties the only issue that arose for determination was precisely the same as per the term of reference given above. My learned predecessor first took up the question of the validity or otherwise of the domestic enquiry said to have been held against Shri R.S. Rana into the alleged acts of misconduct committed by him. The management examined six witnesses in all including Sarvshri Damodar Dass, Accountant of the company, Commander P Vasudeva, Proprietor of the company, Shri S.L. Chopra, Enquiry Officer, A.M. Malhotra, Accountant, Sikands, Ltd., Faridabad, Shri Harish Khera, Accountant, Gedore Tools (P) Ltd., Faridabad, Shri Abnash Chander, Clerk of the Company. The management further placed reliance upon the documentary evidence consisting of Ex. M.W. 1/1 to Ex. M.W. 1/13, Ex. M.W. 2/1 to Ex. M.W. 2/10, Ex. M.W. 3/1, Ex. M.W. 4/1, Ex. M.W. 4/9, Ex. M.W. 5/1 to Ex. M.W. 5/4, Ex. M.W. 6/1 to Ex. M.W. 6/6.

On the other hand, five witnesses were examined on behalf of Shri R.S. Rana, concerned workman, namely, Sarvshri Prem Chand, worker in the concern, Baldev Singh, Production Engineer, M/s Polar Auto-Engineering Industry, Faridabad, Man Singh, Shaperman, Amateep Industry, R.S. Rana, concerned workman Abnash Chander, Clerk of the company. Some documents were also produced which are Ex. W.W. 4/1, W.W. 5/1 to W.W. 5/5, Ex. W.W. 6/1 to W.W. 6/3.

Taking into consideration the facts on record and the contentions raised on both sides, my learned predecessor arrived at the conclusion that the domestic enquiry had not been conducted in accordance with the principles of natural justice and was, therefore, vitiated. He accordingly setaside the enquiry, —*vide* order dated 30th September, 1970, and called upon the management to produce evidence on merits if it so liked. Admittedly this order has not been challenged by the management by way of Writ Petition or otherwise. However, some, evidence has been led to support the impugned order of the termination of the services of the workman. The witnesses examined include Sarvshri Damodar Dass Aggarwal, Accountant, M.W. 1, Commander P. Vasudeva Proprietor, M.W. 2, Love Kumar, previously Foreman of the company, M.W. 3, Shri S.L. Chopra, Enquiry Officer M.W. 4. Reliance has also been placed upon documents, Ex. M.W. 1/1 to Ex. M.W. 1/13, Ex. M.W. 2/1 to Ex. M.W. 2/10, Ex. M.W. 3/1, Ex. M.W. 4/1 to Ex. M.W. 4/9, Ex. M.W. 5/1 to Ex. M.W. 5/4, Ex. M.W. 6/1 to Ex. M.W. 6/6.

Shri R.S. Rana concerned workman has himself come into the witness box besides examining a co-worker Chowkidar Shri Prem Chand. He has also produced a document described as a drawing, Ex. W.W. 1/1.

After the close of the evidence on both sides and at the time of the arguments, the management come forward with some other documents consisting of bills and challans of Messrs Sikands Ltd., Faridabad, relating to certain transactions with a concern known as Bala Press Tools, Faridabad, and said to have been signed by Shri R.S. Rana, the present workman, on behalf of that concern allegedly run by him in the name of his wife. Shri R.S. Rana who was confronted with these documents admitted his signatures on the challans but not on the bills except for an endorsement on bill No. BPT/116/70 showing the acceptance of deductions made in the bills under his signatures.

Arguments have been addressed at considerable length and detailed written arguments have also been filed on both sides. I have very carefully gone through the record and given a considerable thought to the contentions raised by the learned representatives of the parties.

It is common ground between the parties that Shri R.S. Rana had joined service with the present management in October, 1967. According to him the appointment was made, —*vide* letter dated 18th September, 1967 under the signatures of Shri L.W. Noronha, Works Manager, which is Ex. W.W. 4/1. The management, however, contends that this is a forged document procured by Shri R.S. Rana in connivance with Shri L.W. Noronha who was no longer in service. As per the statement of the Proprietor, Commander P. Vasudeva, the appointment of Shri R.S. Rana was made, —*vide* letter dated 20th October, 1967 issued under his signatures which is Ex. M.W. 1/1 on record. He has further referred to the office order dated 19th October, 1967, Ex. M.W. 1/3 issued by him to the effect that no person could be employed in the factory without his prior approval. According to him Shri R.S. Rana had been appointed on probation for six months and the period of probation was further extended for six months, —*vide* letter dated 27th March, 1968, Ex. M.W. 2/4 which was delivered to Shri R.S. Rana on 15th April, 1968. Shri L.W. Noronha has not been examined as a witness by Shri R.S. Rana to prove the authenticity of the said letter of appointment dated 18th September, 1967 which has been denied on behalf of the management. There is no other evidence, oral or documentary, to show that the appointment of Shri R.S. Rana had been made

by virtue of his letter dated 18th September, 1967. In the circumstances the contention raised on behalf of the management that he had been appointed,—vide letter dated 20th October, 1967 has to be believed, in the absence of any proof of the delegation of the necessary powers in this behalf by the Proprietor to the Works Manager. That would, however, not make much difference so far as the determination of the question of the propriety or otherwise of the order of the termination of the services of this workman is concerned as he had admittedly been allowed to continue in service for more than one year or so even after the expiry of the probationary period, and as such, should be presumed to have been automatically made permanent. No rules of the company or instructions of the Proprietor to the contrary have been shown.

As already observed, the services of the present workman were terminated for alleged acts of misconduct in the discharge of his duties. The law is very clear on the points. Before dismissing an employee or terminating his services by way of punishment, the management has to satisfy two essential conditions, firstly, that a charge sheet in writing setting out the specific act or acts of misconduct has been given to him and secondly on considering his explanation thereto as unsatisfactory, a fair domestic enquiry has been conducted into the charge or charges, as the case may be, by giving him adequate opportunity of defending his case. In the instant case, the domestic enquiry has been held to be invalid by order dated 30th September, 1970 of my learned predecessor referred to above. The matter, however, does not end there. The management is entitled to lead evidence on merits even before the Tribunal to justify the impugned order of the termination of the services of the concerned workman and additional evidence on the point has been produced by both the parties which has been referred to above in details. It has, therefore, to be seen as to how far the management has succeeded in establishing its case against the workman.

According to the management Shri R.S. Rana was guilty of three acts of misconduct in the discharge of his duties, firstly, for absenting himself without leave on half days on 12th, 14th and 15th March, 1969, secondly, for making false entries in the records of the company and, thirdly, for wilful slow down in the performance of his duties. These charges had been given to him by means of two separate charge-sheets of 15th March, 1969 Exhibit M.W. 1/7, 17th March, 1969 Exhibit M.W. 2/2 with the allegations that on 12th and 14th March, 1969 he had not returned to his work after the lunch interval and on 15th March, 1969 he was absent without leave during the first half of the day up to 1 p.m. It was further stated that on 17th March, 1969, he had wilfully resorted to slow down and had not finished the work assigned to him and that he had made false entries regarding the work done by him on 17th March, 1969 and during the second half of the day on 14th March, 1969 when he was actually absent from duty. Shri R.S. Rana in his reply submitted to the aforesaid charge-sheets, which is Exhibit 1/4 on record had categorically denied. The charges regarding wilful slow down in the performance of his duties and also making false entries in the records of the company. According to him he had done the full days work both on 14th and 17th March, 1969. As far his absence after the lunch interval on 12th March, 1969 his explanation was that he had gone out after obtaining the permission of the Foreman and the gate pass from the Gate Keeper and that during the first half of 15th March, 1969 he could not attend to his duties due to some urgent work and he had submitted leave application for this interval. It would be proper to take up the charges separately.

So far as the first charge of absenting from duty for half the days mentioned above goes the management has relied upon the entries in the attendance register, the payment of wages register and the job card Exhibit MW 2/1 as also on the testimony of Shri Damodar Dass Accountant M.W. 1, Commander P. Vasudeva Proprietor M.W. 2, Shri Love Kumar Foreman M.W. 3, who have unanimously deposed that Shri R.S. Rana was actually absent from duty without leave or proper authority on the said days. There is not much to discuss for the workman so far as his absence from duty on 12th March, 1969 after 1 p.m. and on 15th March, 1969 up to 1 p.m. is concerned. According to him he had gone out on 12th March, 1969 after obtaining permission from Shri Love Kumar, Foreman and the gate-pass from the Gate Keeper. Shri Love Kumar has come into the witness box as M.W. 3 but not a word was put to him in cross examination in this connection nor have I been referred to any leave application or any order granting him permission to leave the factory after the lunch interval on 12th March, 1969. Even the gatepass has not been produced. In the circumstances, it is difficult to believe the plea raised by Shri R.S. Rana that he had obtained the permission of the Foreman before leaving the factory on 12th March, 1969 afternoon. As far his absence for the first half day on 15th March, 1969 also no prior leave is shown to have been obtained by him. His leave application which according to the management was received later on 17th March, 1969 had been rejected by the Proprietor Commander P. Vasudeva M.W. 2. So to all intents and purposes he had to be treated as having been absent from duty for the first half day on 15th March, 1969 without leave or proper authority.

Then remains the question of his having been absent from duty without leave for the second half day on 14th March, 1969. In the Job Card Exhibit M.W. 2/1, however, he had been shown as having worked from 8.30 a.m. to 5 p.m. on this day which were the normal working hours in the factory. Underneath the two entries showing his work from 8.30 a.m. to 9.30 a.m. and then 9.30 a.m. to 5 p.m. no doubt there is an entry showing him absent from 12.30 p.m. to 5 p.m. but the person making this entry has not been examined as a witness in the case nor is there any entry in the remarks column under the initials of any responsible Officer showing him absent from duty in the second half of the day. The management has further relied upon the entry in the attendance register which again is not helpful to prove this charge against this workman. In the attendance register he was actually marked present for the first as well as the second half day on 14th March, 1969 but later on letter 'P' had been changed into the letter "A". The explanation given for the change of the entry is that as

matter of fact the attendance of the workers for the second half day is marked during the lunch interval and a worker who does not turn up for duty after lunch interval, is shown absent although he has first been marked present. The explanation is obviously not satisfactory nor has the officer concerned come forward to state under what circumstances the relevant entry was changed in the attendance register. As already observed, in the job card the worker is shown to have done the work pertaining to order No. 135 from 8.30 a.m. to 9.30 a.m. and order No. 137 from 9.30 a.m. to 5 p.m. The officer concerned who was supposed to have checked these entries on the same day did not make any remark in the remarks column that the work pertaining to order No. 137 had not been attended to by this workman after the lunch interval. It can not, therefore, be said with any amount of certainty that Shri R.S. Rana had not attended to his work after the lunch interval on 14th March, 1969.

With regard to the charge of absenteeism, there are one or two more points which deserve consideration here. Shri R.S. Rana had joined service in this industrial establishment in October, 1967 and as per the evidence adduced in the case it was only once before that he had been given a warning for being absent from duty on a particular day and his attendance record for the years 1957, 1968, 1969 as produced by Shri Damodar Das Aggarwal, Accountant M.W. 1, also would not show that he was a habitual absentee from duty. Although he had been given the charge sheet in this behalf on 15th March, 1969 the domestic enquiry held by Shri S.L. Chopra M.W. 4 was confined only to the other two charges of making false entries in the records of the company and resorting to slow down in the performance of his duties. The report of the Enquiry Officer is silent about this charge of absenteeism from duty and similarly there is not mention of this charge in the order of termination of his services dated 12th May, 1969. All these facts taken together go a long way to show that the management had in a way condoned this lapse on the part of Shri R.S. Rana and the deduction of his wages for the days he was alleged to have remained absent from duty had been considered sufficient punishment. Even otherwise the punishment of dismissal from service of this workman who had already put in service for three years could not be considered as commensurate with his guilt.

The second charge of the management against this workman was for making false entries in the record of the company with regard to the work alleged to have been done by him on the second half day on 14th March, 1969 and for the whole of the day on 17th March, 1969. As already discussed, his absence from duty after the lunch interval on 14th March, 1969 has not been satisfactorily proved and it can not, therefore, be held that he had not actually done the work pertaining to orders No. 135 and 137 which had taken 8 hours to finish, at per the entries in the job card. The management has produced no evidence worth the name to show that the work pertaining to these particular orders had in fact been done by some other workmen. It has further been alleged that on 17th March, 1969 the Foreman had given one Reamer and six pins for machining to Shri R. S. Rana which was estimated to take only 2½ hours to finish but he took the whole day for machining only one Reamer and no other job was done by him on that day but according to the entries in the job card Exhibit M.W. 2/1 he is shown to have attended to work as per details given below

17-3-69

14 Chuck from 8.30 to 10.00 a.m.
135 Kelvinator 10.00 to 1.30 p.m.

PTC Turning of
tapper reamer 1.45 to 3.15 p.m.

No. DD 4335 3.20 to 5.00 p.m.

The entries in the job card have admittedly been made partly by the workman and partly by the Foreman Shri Love Kumar M.W. 2. According to Shri Love Kumar, Shri R.S. Rana had been given only the work of one Reamer and six pins for machining and the relevant entry in this behalf was made by him giving the estimated time required to finish the work as 1 hour 30 minutes. A glance at the job card Exhibit M.W. 2/1 would show that this work was assigned to Shri R.S. Rana after the lunch interval and he had finished it within the estimated time from 1.45 p.m. to 3.15 p.m. Strangely enough there is no mention of the machining of the six pins in the relevant entry in the handwriting of Shri Love Kumar nor has it been shown as to what other work had been assigned to Shri R.S. Rana before the lunch interval when he had been admittedly present on duty throughout the day. In the circumstances, it can not be held that he had not carried out the other items of work mentioned in the job card as per details given above. Shri R.S. Rana had produced a document described as a Drawing Exhibit W.W. 1/1 which was given to him by the Foreman Shri Love Kumar and he was required to carry out the work according to that Drawing. Shri Love Kumar M.W. 2 has admitted that he had given this Drawing to Shri R.S. Rana on that day. No expert evidence has been produced to show that these particular items of work did not in fact require the time as shown in the job card. As already discussed, the entries in the job card must have been checked by the responsible officer on the same day and if the same were found to be incorrect, there should have been the necessary remarks in the remarks column in the job card which are again conspicuous by their absence. The entries in the job card are no doubt in different inks and some of the entries are in pencil writing. But that by itself would not justify any adverse inference against the workman admittedly when all the entries have not been made by him and the evidence led by the management on this point is not conclusive. That disposes of the charge of making false entries in the records of the company which, as per discussions above, has not been successfully established against the workman.

The last though not the least serious charge levelled by the management against Shri R.S. Rana was about wilful slow down in the performance of his duties. Such an attitude on the part of the workman is highly objectionable and no employer would tolerate it as otherwise it may give an incentive to the other workmen not to devote themselves fully to their duties and may ultimately hamper the production. This evil practice has got to be nipped in the bud. In view of the specific denial of the charge by the workman in the present case, the burden was heavy upon the management to establish it by bringing on record tangible evidence to show that Shri R.S. Rana had intentionally resorted to slow down in the performance of his duties. But on a close scrutiny of the entire material on record, I am constrained to observe that the management has simply failed to discharge this burden. The only allegation made by the management in this connection is that on 17th March, 1969 Shri R.S. Rana had given out to the Foreman that he would not work properly until and unless the increment in the wages claimed by him had been granted. The Foreman had then taken him to the Proprietor, Commander P. Vasudeva, who had assured him that his claim for increment would be considered on merits. It had, however, no salutary effect upon him and he had taken the whole of the day in turning of only one Reamer whereas he was required to machine six pins also and the entire job would be finished within 2½ hours. According to Shri R.S. Rana, however, he had been asked only to turn a tapper Reamer and he had finished this work within 1½ hours between 1.45 p.m. to 3.15 p.m. and in addition he had attended to other work pertaining to 1. Fourchuck, 135. Kelivinator and job No. DD-43351. This contention of the workman is borne out from the entries in the job card, as already discussed, which would go to show that he had not remained idle on that day. Moreover, slow down in work is a process, a continuous act and to bring this charge home to the present workman, the management had to establish that he had intentionally resorted to this practice for one reason or the other resulting into the production below the target. No evidence has been led to show as to what was the normal production of this workman before he had allegedly resorted to slow down in the performance of his duties. No expert evidence has been brought on record to establish conclusively that the work assigned to him on that particular day could be finished in 2½ hours only but he had taken whole of the day to do that work. The entries in the job card, on the other hand, show that he had attended to the different kinds of jobs throughout the working hours on that day even if it be assumed for the sake of argument that the production of this workman on the said day had fallen short of the expectations of the management that by itself would not be a sufficient ground for throwing him out of job. Slow down to be punishable had to be established as a continuous act on the part of this workman for a sufficiently reasonable period which has not been done in the instant case.

It has been argued on behalf of the management that previously also Shri R.S. Rana had displayed lack of interest in his work by remaining absent from duty or otherwise for which he had been given warning. My attention has been drawn to the letter dated 5th April, 1968 which is admitted by Shri R.S. Rana and he has himself filed a copy of this letter which is Exhibit WW 5/2 on record. His contention, however, is that in para 2 of this letter a material alteration has been made by changing the word overtime into efficiently. The contention does not appear to be without force. In para 2 of the copy of the latter delivered to him on 6th April, 1968 the word is "you were asked by the Foreman to work overtime to catch up with the production...." whereas in the original letter produced by the management the words are "you were asked by the Foreman to work efficiently to catch up with the production...." No reasonable explanation has been offered by the management to explain this overwriting in the original letter. So, taking into consideration all the facts and the circumstances of the case discussed above it has to be held that the charge of slow down in the performance of his duties has not been satisfactorily established against Shri R.S. Rana.

From the resume of the facts discussed above, it would appear that the two main charges of slow down in the performance of his duties and making false entries in the record of the company levelled by the management against the concerned workman, Shri R.S. Rana have not been satisfactorily established and as such these charges could not be the proper basis for terminating his services. As far the remaining charge of absenteeism without prior leave or proper authority for half days on 12th, 14th and 15th March, 1969, it has already been observed that this charge had not been taken into consideration by the Enquiry Officer in the domestic enquiry held against his workman. His absence from duty on 14th March, 1969 has not been proved and as per the entries in the job card, he had remained on duty from 8.30 A.M. to 5 P.M. The relevant entry in the attendance register showing him absent after the lunch interval contains an overwriting which clearly shows that he first been marked present but subsequently the letter 'P' had been changed into the letter 'A' showing him absent. The time-keeper who actually marked the attendance of the workman has not been examined as a witness to explain this overwriting. Shri R.S. Rana has frankly admitted that he had left the factory after the lunch interval on 12th March, 1969 with the verbal permission of the Foreman and after obtaining the gate pass from the Gatekeeper. This was his stand from the very beginning although no question has been put by him to Shri Love Kumar Foreman M.W. 3 in this connection nor has the management produced the Gatekeeper to contradict him on this point. As far his absence in the first half day on 15th March, 1969 he had submitted his leave application which is Exhibit M.W 1/13 on record and purports to be of the same day. The leave asked for was, however, not granted by the Proprietor on the ground that prior permission for the same had not been obtained. It was no doubt within the discretion of the management to grant him the leave asked for or not. But in the context of the things discussed above, this lapse on the part of the workman cannot be considered sufficient to justify the drastic action of the termination of his services.

It will not be out of place to consider here that according to Shri R.S. Rana the management had been accuated by considerations of victimisation in terminating his services because of his union activities. This contention which has been strongly refuted on behalf of the management has not been sustained by any satisfactory evidence and there is no material on the record to indicate that there was any union of the workers in this establishment or that Shri R.S. Rana had taken interest in the activities of the union so as to displease the management. The management might have a grievance against him because of his interest in the business run by him in the name of his wife described as Bala Press Tools as his casual absence from duty has also been attributed to his interest in the said business; that might have been the cause of his removal from service. At any rate I do not feel inclined to believe that the termination of his services had been brought about on account of his union activities.

However, for the reasons aforesaid, and my findings with regard to the charges levelled by the management against Shri R.S. Rana, the impugned order of the termination of his services cannot be held to be justified and in order and, in the result, he is entitled to reinstatement, of course, with continuity of his previous service. The issue is accordingly decided in his favour and against the management.

As for the back wages, the claim of Shri R.S. Rana does not appear to be well-founded. As already pointed out, no claim statement was filed by him in the present proceedings initiated after the receipt of the reference and he had only relied upon the demand notice dated 3rd June, 1969 received along with the reference wherein the brief averment made by him was to the effect that he had been illegally dismissed from service and he was entitled to reinstatement with full back wages and continuity of service. In his further statement, the rejoinder dated 2nd January, 1970, also there was no averment that he had been out of job after the termination of his services by the company. In his statement recorded by this Tribunal on 9th February, 1971, no doubt, it had been asserted by him that he had tried to get some other job but without success. But there is no evidence worth the name to support this contention and it has not been indicated as to when and where he had made efforts to secure some other job. The management, on the other hand, has strongly pleaded that, as a matter of fact, he has all along been occupied in running his own independent business under the name and style of Bala Press Tools at Faridabad. He has no doubt denied the suggestion made to him by the management in this connection in his cross-examination. But the management has brought sufficient material on record which goes a long way to show that Shri R.S. Rana has, in fact, been running the said business. Besides the statement of Commander P. Vasudeva M.W. 2, there is the sworn testimony of two other witnesses Sarvshri A.N. Malhotra, Accountant M/s Sikands Ltd., Faridabad and Shri Harish Khera, Accountant M/s Gedore Tools (P) Ltd., Faridabad which conclusively prove that Shri R.S. Rana has been transacting business with these establishment, on behalf of Bala Press Tools by securing orders etc. In the visiting card Exhibit M.W. 5/4 he has described himself as the representative of Bala Press Tools. The management has confronted him with a number of challans and bills produced by M/s Sikands Ltd., Faridabad and he has admitted that these challans are signed by him though not the bills except for an endorsement on bill No. BPT116/70, dated 17th November, 1970 accepting deduction of some amount out of the original bill submitted on behalf of Bala Press Tools. All these facts taken together belie his statement that he had nothing to do with Bala Press Tools. A person who approaches different establishments for securing orders for Bala Press Tools describing himself as representative of this concern, signs the challans and accepts even deductions out of the amount claimed in the bills cannot be believed to have no effective control over the business of that concern. He has alleged that, as a matter of fact, that concern has been run by his wife Shrimati Bala Rana and her brother Raj Kumar Malhotra. The name of Shri Raj Kumar Malhotra does not appear in the records of Bala Press Tools referred to above nor could he have the courage to come into the witness box and support the above version of Shri R.S. Rana. His wife has also not been examined as a witness in the case. No reasonable explanation has been afforded for with holding these important witnesses. In the circumstances the inference is irresistible that Shri R.S. Rana has actually been managing and running Bala Press Tools and that being so it can be held that he has not been gainfully employed during the period of his un-employment with the company.

In view of my above findings Shri R.S. Rana is entitled to reinstatement with continuity of his previous service but not back wages. I make my award accordingly but without any order as to costs.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 540 dated 31st May, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 29th May, 1971.